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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

J.R.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN  
COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF  
HUMAN SERVICES,

Real Party in Interest.

F058419

(Super. Ct. Nos. JD118162)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. John G. O'Rourke, Judge. (Retired judge of the Kings Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

J.R., in pro. per., for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Jennifer L. Thurston, Deputy County Counsel, for Real Party in Interest.

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\*Before Dawson, Acting P.J., Hill, J., and Poochigian, J.

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Petitioner in propria persona seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) to vacate the orders of the juvenile court terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing<sup>1</sup> as to his daughter S.G. We will deny the petition.

### **STATEMENT OF THE CASE AND FACTS**

In July 2008, newborn S.G. was taken into protective custody by the Kern County Department of Human Services (department) after she and her mother S.<sup>2</sup> tested positive for methamphetamine. S. has an extensive history of substance abuse and child welfare intervention. At the initiation of these proceedings, S. had failed to reunify with six of her children. In August, S.G. was placed in foster care.

In September 2008, at the jurisdictional hearing, the juvenile court adjudged S.G. a dependent of the court and declared petitioner to be her biological father. Petitioner informed the department he was being treated for leukemia, anxiety and depression.

In October 2008, at the dispositional hearing, the juvenile court ordered petitioner to participate in counseling for child neglect, substance abuse and substance abuse aftercare, alcohol abuse, and to submit to random drug testing. The court denied S. reunification services and set the six-month review hearing for March 2009.

Over the ensuing months, petitioner progressed in his services plan. He completed parent training and counseling for child neglect and was making good progress in substance abuse counseling. He also tested negative for drugs and regularly visited S.G., demonstrating good parenting skills. In its report for the six-month review hearing, the

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> S. did not file a writ petition.

department recommended the court continue services so petitioner could complete substance abuse counseling and obtain proper housing and supplies for S.G.

In March 2009, at the six-month review hearing, the juvenile court continued services to the 12-month review hearing, which it set for September 2009. The court also granted the department discretion to arrange overnight visitation. Unfortunately, in the intervening months, petitioner regressed. He missed drug tests in April and May and then tested positive for methamphetamine in early May. In early June, he was discharged from the substance abuse program for testing positive in May and for coming to group meetings intoxicated. In June, he attempted to commit suicide by ingesting 90 pills and was voluntarily hospitalized for five days to stabilize him. He reenrolled in substance abuse counseling and, in July, provided two suspicious but not drug-yielding samples. By mid-August, petitioner had transitioned into a 16-week relapse prevention program to be followed by an 8-week advanced treatment program.

During this same time period, petitioner consistently visited S.G. and was bonding with her. He was also affectionate and attentive to her. However, the department recommended the court terminate his services and consider a plan of adoption in light of petitioner's overall lack of progress.

In September 2009, at the 12-month review hearing, petitioner's attorney asked the court to continue services despite petitioner's relapse because petitioner promptly returned to treatment and tested negative for drugs throughout the first six months of dependency. Petitioner's attorney also argued the juvenile court should continue services because there was a substantial probability S.G. would be returned to petitioner's custody by the 18-month review hearing.

County counsel argued petitioner's relapse spanned approximately two and a half months if the court considered his suicide attempt in June. Further, county counsel pointed out petitioner would not complete substance abuse treatment until February 2010,

beyond the 18-month limitation on reunification services. Therefore, county counsel argued there was not a substantial probability of return to warrant continuing services.

At the conclusion of the hearing, the juvenile court terminated petitioner's reunification services and set a section 366.26 hearing to implement a permanent plan. This petition ensued.

## **DISCUSSION**

Petitioner contends he made sufficient progress, despite his relapse, and the court should have continued reunification services. We review the juvenile court's order terminating reunification services for substantial evidence, resolving all conflicts in favor of the court and indulging in all legitimate inferences to uphold the court's finding. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.) On this record as summarized above, we conclude substantial evidence supports the juvenile court's order.

Under the statutory scheme, the juvenile court had discretion to extend services up to January 2010, which marks 18 months from July 2008, the month S.G. was physically removed from S.'s physical custody *only* if it found a substantial probability that S.G. would be returned to petitioner's custody and safely maintained in his home within the extended period of time, or that reasonable services were not provided to him. (§§ 361.5, subd. (a); 366.21, subd. (g)(1).) Since petitioner does not challenge the reasonableness of services provided, we are concerned only with the court's finding there was not a substantial probability of return within the extended time period.

In assessing whether there is a substantial probability of return, the juvenile court must consider the parent's capacity to meet the objectives of the case plan and provide a safe home for the child. (§ 366.21, subd. (g)(1)(C).) In this case, after 12 months of services, petitioner was still struggling with sobriety and suffering the physical and emotional effects of a serious physical illness. In addition, he could not have completed substance abuse treatment by the 18-month review hearing. The hearing would have

been set for January 2010, a month before petitioner is scheduled to complete treatment. Further, even if petitioner could have completed substance abuse treatment by January 2010, there is no reason to believe S.G. could have been returned to his custody at that time given his history of relapse and instability. Based on the foregoing, we affirm the juvenile court's finding there was not a substantial probability of return and its order terminating petitioner's reunification services.

### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.